

Decision 01-09-021 September 6, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)
Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390.	Rulemaking 99-11-022 (Filed November 18, 1999)

**OPINION REGARDING THE IEP'S PETITION FOR MODIFICATION  
OF DECISION 01-06-015**

**Summary**

On July 13, 2001, the Independent Energy Producers Association (IEP) filed a petition for modification of Decision (D.) 01-06-015 (Petition). IEP requests that the reference to the date of July 15, 2001, found at page 4 of D.01-06-015, be extended to July 31, 2001. July 15, 2001 was the date set by that decision for three types of contract modifications to the contracts of qualifying

facilities (QFs) which would be “deemed reasonable” if the modification was “made prior to July 15, 2001.” IEP states that the date should be extended due to the July 4th holiday and the difficulty in concluding the contract modifications by July 15, 2001. IEP also states that the extension would not prejudice any party to this proceeding.

Today’s decision grants IEP’s Petition, extending the July 15, 2001 date to July 31, 2001. In addition, the decision extends the date for submitting the report on the status of certain QF activities from July 31, 2001, to two weeks after the issuance of this decision. Today’s decision also specifies that the report shall contain certain QF identifying information in the interest of improving the quality of the report.

## **Background**

Following the filing of IEP’s Petition, the Administrative Law Judge (ALJ) issued a ruling on July 19, 2001 which addressed the July 15, 2001 date set forth in D.01-06-015. The ALJ ruling extended the July 15, 2001 date until the Commission could consider the Petition, and shortened the time for parties to respond to the Petition.

Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) filed responses in support of extending the July 15, 2001 date to July 31, 2001. PG&E requests that any decision granting IEP’s Petition should also “affirm that contract amendments entered into after July 14, 2001 are deemed reasonable by the Commission and all costs associated with payments made under such contract amendments are recoverable subject only to the utilities’ prudent administration of the amendments.”

The Sonoma County Water Agency (SCWA) and the Nevada Irrigation District (NID), who filed their responses on July 27, 2001, also support IEP’s

Petition. As public agencies which have entered into QF contracts, they point out that they were not timely informed of the offers to amend the QF contracts, and that as public agencies, they require more time to consider and act on any proposed contract amendments. In addition, SCWA believes that PG&E's bankruptcy filing has complicated the QF contract amendment process, which is another reason to extend the July 15 date.

Ordering Paragraph 5 of D.01-06-015 provides that SCE, San Diego Gas & Electric Company (SDG&E), and PG&E are to report to the Commission on July 31, 2001 on the status of all of the voluntary QF contract amendments authorized in that decision. On July 26, 2001, SCE's attorney sent a letter to the Commission's Executive Director requesting an extension of the reporting requirement date. Due to the extension of the July 15, 2001 date in the ALJ ruling, the Executive Director released a letter on July 31, 2001, granting SCE's extension request, and extending the reporting date until the "Commission specifies another reporting requirement date in its decision regarding IEP's petition to modify D.01-06-015."

#### **Modification of D.01-06-015**

The Commission issued D.01-06-015 to help bring stability to the electricity supply contracts entered into between the utilities and the sellers of the electricity, i.e., the QFs. In order to "ensure that QFs generate as much electricity as reasonably possible, and at reasonable prices," the Commission preapproved three types of contract modifications which it viewed as providing incentives to maximize QF production, stating that these three types of contract modifications "which are made prior to July 15, 2001 are deemed reasonable by the Commission."

The three non-standard contract modifications that D.01-06-015 would find reasonable are: (1) replacing the standard Short Run Avoided Cost (SRAC) formula with a fixed price for five years of 5.37 cents/kWh; (2) allowing supplemental payments to be made to QFs above the specified SRAC for up to one year for QFs that demonstrate to the Commission's Energy Division that the current SRAC is insufficient to recover the QF's actual fuel costs for producing electricity; and (3) providing incentive payments for QFs to increase generation above their normal operating levels based on the terms specified in D.00-08-022, as clarified in D.01-06-015.

We first note that D.01-06-015 was adopted on June 13, 2001, and was mailed to the parties in the above-captioned proceedings on June 14. According to SCWA's response, PG&E contacted the County of Sonoma on July 13, 2001 with an offer to amend the County's QF contract. However, SCWA was not notified of PG&E's willingness to amend SCWA's QF contract until the July 15 deadline had passed.

It appears that the utilities and some of the QFs had insufficient time to consider the proposed contract amendments. To ensure that QF electricity production is maximized, the July 15 date for deeming reasonable any QF contract modification using any of the three preapproved modifications, as set forth at page 4 of D.01-06-015, should be extended to July 31, 2001. This will give all concerned parties sufficient opportunity to negotiate the three types of QF contract modifications that will be deemed reasonable.

We next turn to the reporting date of July 31, 2001 set forth in Ordering Paragraph 5 of D.01-06-015. This date was extended in the Executive Director's July 31 letter until the Commission specifies another date in its decision regarding IEP's Petition. The purpose of the reporting requirement, among other

things, is to provide the Commission with information about “the number of QF requests for modifications to their existing contracts, the number of contracts the utilities have agreed to modify, and the number of requests the utility has not agreed to.” Since the reporting requirement is directly related to the number of QF contract modifications, the reporting date should be extended as well. Instead of July 31, 2001, the new reporting date should be two weeks after the issuance of this decision.

In order to improve the quality of the information provided to the Commission by the utilities, we believe that it would be beneficial to have the utilities provide a comprehensive listing of their QF contracts in relationship to the information requested in D.01-06-015. The report should list the name of each QF with a Purchased Power Agreement with the respective utility, the QF identification or log number, the technology type of the QF, the contract capacity, the Standard Offer contract type, and whether or not a contract amendment was entered into, the date the amendment was entered into, and the type of contract modification that was entered into. In addition, the information about the number of QFs seeking back payments should include the names of the QFs. The information regarding the back payments the utility has agreed to make should also include the amount of back payments owed to each QF. The language in the “Reporting Requirements” section of D.01-06-015 should be modified to reflect this change.

In its response PG&E requests that if the July 15 date is extended, the contract amendments entered into after July 14, 2001 be deemed reasonable by the Commission, and that all of the costs associated with the payments made under the contract amendments be recoverable, subject only to the utilities’ prudent administration of the amendments. Essentially, PG&E is requesting that

the Commission reaffirm Ordering Paragraph 3 of D.01-06-015 and its applicability to contract modifications entered into before the new “deemed reasonable” date.<sup>1</sup>

We do not believe this reaffirmation is necessary. By modifying the “deemed reasonable” date of July 15, 2001 to July 31, 2001, Ordering Paragraph 3 remains operative, and authorizes the three utilities “to recover all reasonable payments made under the amendments subject to their prudent administration of the amendments.”

Since no one has objected to the relief requested in the Petition, the Commission, in accordance with Rule 77.7(f) of the Commission’s Rules of Practice and Procedure, will waive the time for public review and comment.

### **Findings of Fact**

1. The Petition requests that the reference to the July 15, 2001 date, found at page 4 of D.01-06-015, be extended to July 31, 2001.
2. Under D.01-06-015, three types of QF contract modifications would be deemed reasonable if made prior to July 15, 2001.
3. The July 19, 2001 ALJ ruling extended the July 15, 2001 date until the Commission could consider the Petition.
4. None of the responses to the Petition oppose the relief sought by IEP.
5. The responses of SCWA and NID point out that public agencies require more time to consider and act on any proposed contract amendments.

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<sup>1</sup> Ordering Paragraph 3 states: “SCE, SDG&E, and PG&E shall be authorized to recover all reasonable payments made under the amendments subject to their prudent administration of the amendments.”

6. Ordering Paragraph 5 of D.01-06-015 provides that SCE, SDG&E, and PG&E are to report to the Commission on the status of the QF contract amendments on July 31, 2001.

7. The July 31, 2001 reporting date was extended by the Executive Director until the Commission specifies another reporting requirement date in its decision regarding the Petition.

8. Three types of QF contract modifications were approved in D.01-06-015, which the Commission viewed as providing incentives to maximize QF production.

9. SCWA's response was not notified of PG&E's willingness to amend SCWA's QF contract until the July 15, 2001 deadline had passed.

10. It appears that the utilities and some of the QFs had insufficient time to consider the proposed contract amendments to the QF contracts.

11. The extension to July 31, 2001 will give all concerned parties sufficient opportunity to negotiate the three types of QF contract modifications that will be deemed reasonable.

### **Conclusions of Law**

1. In order to ensure that QF electricity production is maximized, the July 15, 2001 date for deeming reasonable any QF contract modification using any of the three preapproved modifications should be extended to July 31, 2001.

2. Since the reporting requirement is directly related to the number of QF contract modifications, the reporting date should be extended to two weeks after the issuance of this decision.

3. To improve the quality of the information provided to the Commission by the utilities, the "Reporting Requirements" section of D.01-06-015 should be

modified so that the utilities provide a comprehensive listing of their QF contracts in relationship to the information requested.

4. There is no need to reaffirm Ordering Paragraph 3 of D.01-06-015 because that ordering paragraph remains operative even though the July 15, 2001 “deemed reasonable” date has been extended to July 31, 2001.

5. Since no one objected to the relief requested in the Petition, we waive public review and comment of this decision.

## **O R D E R**

### **IT IS ORDERED** that:

1. The petition for modification of Decision (D.) 01-06-015, filed by the Independent Energy Producers Association (IEP), is granted as set forth below.

2. D.01-06-015 shall be modified as follows:

- a. At page 4, the reference to the date of “July 15, 2001” shall be replaced with the date of “July 31, 2001.”
- b. At page 7 in the “Reporting Requirements” section, the paragraph beginning with the phrase “To evaluate the usefulness...” shall be replaced in its entirety with the following paragraph:

“To evaluate the usefulness of the guidance provided today, the Commission will require each utility to provide a report on October 12, 2001 identifying the number of QFs requests for modifications to their existing contracts, the number of contracts the utilities have agreed to modify, and the number of requests the utility has not agreed to. The report shall utilize a comprehensive listing of the name of each QF with a Purchased Power Agreement with the utility, its QF identification number or log number, technology type, contract capacity, Standard Offer contract type, whether or not the QF signed a contract amendment, and if it did sign a contract amendment, the type of contract modification that was executed, and the date the modification was executed. These reports shall also state the name and number of QFs seeking back payments, the number of



back payments the utility has agreed to make, the amount of back payments the utility has agreed to pay, and the number of such requests that the utility has not agreed to. To the extent that there are any such requests for back payments or contract modifications that have not been agreed to by the utility, the utility should also state the reasons why the utility has not agreed to the QF's request."

- c. At page 10 in Conclusion of Law 7, the reference to the date of "July 31, 2001" shall be replaced by the following: "July 31, 2001, or as directed by the Commission."
- d. At page 11 in Ordering Paragraph 5, the reference to the date of "July 31, 2001" shall be replaced by the following: "July 31, 2001, or as directed by the Commission."

3. Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company shall submit the status report required in Ordering Paragraph 5 of D.01-06-015, within two weeks after the issuance of today's decision.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners